IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

MFA.No. 487 of 2000(B)

AGAINST THE AWARD DT. 20/8/1999 IN OP.(MV) 1425/96 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, TIRUR.

APPELLANT: 3RD RESPONDENT

UNIOTED INDIA INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, COURT ROAD, MANJERI.

BY ADV. SRI.SIBY MATHEW

RESPONDENTS: APPLICANT AND RESPONDENTS 1 AND 2
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1. MOHANAN, SON OF NAMBEERI, THOOMBILAKKAT HOUSE, KLARI AMSOM DESOM, P.O.EDARIKKODE, MALAPPURAM.

***2. V.VINOD, SON OF BALAN, DRIVER OF LORRY NO.KRZ 5387 160, RAJACOLONY RED HILLS, MADRAS 52, NOW RESIDING AT NADAKKAVIL HOUSE, PERINCHOLAM , P.O. MANNARKKAD 678 002. (DELETED)**

3. T.K.PRABHAKARAN, OWNER OF LORRY KRZ 5387, P.O. EDARIKKODE, MALAPPURAM DIST.

*** THE NAME OF THE 2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER THE ORDER DT. 9.7.01 ON CMP. 5713/01 IN M.F.A. 487/2000.**

BY ADV. SRI.P.CHADRASEKHAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A. NO.487/2000

ORDER ON CMP. NO.6253/2001 IN MFA. NO.487/2000

DISMISSED

07.08.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- V.GIRI, JUDGE

/TRUE COPY/

P.S. TO JUDGE

tss

J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.487 of 2000

Dated this the 7th day of August, 2007.

JUDGMENT

KOSHY,J.

The insurance company challenges the order of the Tribunal in awarding compensation for a cleaner of the lorry insured by it under Section 166 of the Motor Vehicles Act, 1988.

2. It is the contention of the appellant that compensation can be paid only as per the Workmen's Compensation Act. It has been held by the Apex Court that compensation for third parties and employees of the lorry are calculated under different schemes. The vehicle is covered by an Act policy. The insurer is liable to pay compensation in respect of an employee only under the Workmen's Compensation Act. The tribunal had at one stage accepted the above contention, but finally awarded an

amount of Rs.74,000/- after assessing the compensation under Section 166 of the Motor Vehicles Act.

3. Admittedly, the claimant was a cleaner, an employee and the policy is an Act policy. Hence he is covered by the policy under the Workmen's Compensation Act. The doctor certified 30% disability. The age of the claimant was 30 years. Therefore, the relevant factor is 207.98. Since the accident happened in 1994, before the amendment of Act 30/1995, the maximum monthly income for calculation of compensation that can be adopted is Rs.1,000/-. If that be so, the compensation payable under the Workmen's Compensation Act is:

1000 x 50/100 x 207.98 x 30/100 = 31,197/-

rounded to Rs.**31,200**/-

4. Since the adjudication and payments were made after the amendment of the Act, the appellant is bound to pay 12% interest on the compensation. The appellant should deposit the amount of Rs.31,200/- with interest at 12% from the date of application till the date of

deposit, after adjusting the amount, if already deposited. The liability of the employer is also to pay workmen's compensation to its employee.

We order that the liability of the insurance company is limited to Rs.31,200/- with 12% interest. The appeal is allowed to the above extent.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

sk/

//true copy//

J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.487 of 2000

JUDGMENT

7th August, 2007.